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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLIVEN D. BUNDY

Defendant.

Case No. CV 2:12-cv-00804-LDG-GWF

BUNDY'S REPLY TO UNITED STATES' OPPOSITION TO CROSS-MOTION TO DISMISS (Evidentiary Hearing Requested)

This document is timely filed.

I. Disclaimer Clause

The Plaintiff in its opposition to Defendant's Motion to Dismiss tries to imply that all law and issues with respect to the ownership of the public lands in Nevada is decided by citing cases where the Court had to make decisions based on inadequate arguments presented therein. Defendant reaffirms here that he has put forth before this Court an argument dealing with the Disclaimer Clause of the Nevada Enabling Act that has never before been presented. This argument presented by Defendant is a case of first impression and courts have the ability to correct at any time that which needs redecided. Defendant shall restate his argument on the Disclaimer Clause once again:

NRS 321.596-599 *et seq* (effective July 1, 1979) and its Legislative Findings therewith did what congress failed to complete in its promise in the Enabling Act admitting Nevada into

the Union in 1864. Defendant stipulates that the United States acquired the public domain making up Nevada by and through the Treaty of Guadalupe Hidalgo in 1848. It is what happened in 1864 that instructed Congress to honor certain terms and conditions to have another new State of the Union join in. The common challenge to Defendant's claim herein is the disclaimer clause in the Enabling Act which states as follows:

> Section 1. Authorization for formation of state. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the inhabitants of that portion of the territory of Nevada included in the boundaries hereinafter designated be, and they are hereby, authorized to form for themselves, out of said territory, a state government, with the name aforesaid, which said state, when formed, shall be admitted into the Union upon an equal footing with the original states, in all respects whatsoever. (Emphasis Added).
>
> Sec. 4. Authorization to form constitution and state government; limitations. *And be it further enacted,*
>
> Third. That the people inhabiting said territory do agree and declare that they **forever disclaim all right and title to the unappropriated public lands lying within said territory, and that the same shall be and remain at the sole and entire disposition of the United States**; and that the lands belonging to citizens of the United States residing without the said state shall never be taxed higher than the land belonging to the residents thereof; and that no taxes shall be imposed by said state on lands or property therein belonging to, or which may hereafter be purchased by, the United States. (Emphasis Added).
>
> Sec. 10. Five percent of subsequent sales of public lands by United States to be paid to state for public roads and irrigation. *And be it further enacted,* That five percentum of the proceeds of **the sales of all public lands lying within said state, which shall be sold by the United States subsequent to the admission of said state into the Union**, after deducting all the expenses incident to the same, shall be paid to the said state for the purpose of making and improving public roads, constructing ditches or canals, to effect a general system of irrigation of the agricultural land in the state, as the legislature shall direct. (Emphasis Added).

It appears in the Third part of Sec-4 of the Act that the People of the new State have disclaimed all rights, title, claim etc. forever to the United States. Upon clear examination of Section 1 and 10 all that the disclaimer is a Quit Claim Deed to the United States by the Inhabitants putting a condition on the new State that when the United States disposed of the

public lands that the State would not have any claim to cloud title to the new owners. When coupling all of these Sections together, which includes the Equal Footing status guaranteed to Nevada by Congress, we see the United States was only appointed the sole real-estate agent for Nevada, the same as Ohio did to settle the Revolutionary War debt with the sale proceeds of the public lands in that State. The school sections granted prior to statehood was an appropriation prior to statehood, not a waiver as some would claim. Once statehood happened, that was instant and Nevada was on an Equal Footing with all her Sister States of the Union.

Plaintiff should be denied the relief it requests because Bundy is not running any cattle on lands owned by the United States.

II. Endangered Species Act (ESA)

Plaintiff says they are not bringing this case against Bundy under the ESA but the record is very clear that the reason cattle were ordered off the range in Southern Nevada back in the mid 1990's was based on the Full Force and Effect Decision they used in *Bundy I*. The common thread here is the Desert Tortoise and other sensitive species protected under the ESA. Defendant reaffirms here that the ESA was misapplied as he argued and demonstrated what the law actually allows to trigger federal jurisdiction, "foreign commerce" and the Plaintiff has failed to offer any evidence that the species Defendant's cattle are so harmful to, are engaged in any such commerce. Plaintiff should be denied the relief it seeks because this entire exercise of property taking over the past two decades is based on fraud and is the origin of all actions taken against Defendant and his property and rights.

III. Equal Footing Doctrine

Plaintiff just simply misrepresents Defendant's points put forth on the Equal Footing Doctrine and Defendant shall just reaffirm his arguments laid out in the Motion to Dismiss.

IV. NRS 568.355 "Permit" and the Supremacy Clause

Plaintiff makes the following statement: *Nevada's "open range" law has no application here for two reasons. First, the plain language of NEV. REV. STAT. § 568.355 does not support his position about trespass. Rather, the statute is entirely consistent with the United States' position that Defendant Bundy needs to have a permit from the Department of the Interior to graze the federal lands, which he does not have.* (Plaintiff's Opposition @pg-11, Ln.10-12)

The Statute states as follows: *NRS 568.355 "Open range" defined. As used in NRS 568.360 and 568.370, unless the context otherwise requires, "open range" means all unenclosed land outside of cities and towns upon which cattle, sheep or other domestic animals by custom, license, lease or permit are grazed or permitted to roam.*

Nowhere in the Statute does it say that Defendant has to have a permit from the Department of Interior to graze. Plaintiff is assuming that the lands ownership issue is settled and that the United States owns almost all of Nevada and that's it. The Statute is actually consistent with NRS 321.596-599 et seq wherein Nevada owns all the public lands in Nevada. If Defendant were on federal lands, he would have to have a federal permit, but he does not graze his cattle on federal lands. Plaintiff has misapplied this Statute; Defendant is not instructed by this Statute to obtain a permit from the Department of the Interior.

Then Plaintiff further states as follows: *Second, even if the statute means what Defendant Bundy believes, under the Supremacy Clause the statute cannot trump the federal law requiring a permit to graze.* (Plaintiff's Opposition @pg-11, Ln.15-16). As to the "Supremacy Clause" and its power we are directed as to what the real definition of the clause is in *Printz v. United States,* 521 U.S. 898 (1997), wherein Justice Scalia instructs in part as follows:

> The dissent perceives a simple answer in that portion of Article VI which requires that "all executive and judicial Officers, both of the United States and of the

> several States, shall be bound by Oath or Affirmation, to support this Constitution," arguing that by virtue of the Supremacy Clause this makes "not only the Constitution, but every law enacted by Congress as well," binding on state officers, including laws requiring state-officer enforcement. *Post,* at 944. The Supremacy Clause, however, makes "Law of the Land" only "Laws of the United States which shall be made in Pursuance [of the Constitution]," Art. VI, cl. 2, so the Supremacy 925*925 Clause merely brings us back to the question discussed earlier, whether laws conscripting state officers violate state sovereignty and are thus not in accord with the Constitution. *Id @ 924-925*.

The above instruction clearly makes Plaintiff's representation of the Supremacy Clause incorrect and without merit.

Plaintiff's request for relief should be denied because they have failed to make an argument upon which relief can be granted with respect to Defendant being ordered by Nevada Statute to obtain a permit from them and the Supremacy Clause is not appropriately applied.

V. Only Bundy's cattle do the harm; all other cattle not a problem

Plaintiff states in part as follows: *The United States has established conclusively irreparable harm not only through the continuing* ***nature of Defendant Bundy's trespass***, ... ***but also because Defendant Bundy's cattle have caused and continue to cause damage to natural and cultural resources and pose a threat to public safety***. (Plaintiff's Opposition @pg-11, Ln. 19-23). (Emphasis Provided). Clearly Plaintiff here demonstrates that they do not feel they have to prove the original origin of the cattle, whomever else they may belong to or that there are cattle out there that may not belong to Bundy. If Plaintiff does not allege that Bundy is the source of all the cattle in the area, why haven't they gathered these bad cattle before this. Do they need to sue Bundy to get permission to gather the wild cows or cattle that belong to other Ranchers.

Plaintiff's relief requested should be denied because they have failed to prove the origin of all of the cattle sufficient to meet the muster of the rules of evidence. Instead they want this

Court to issue an open ended order to them, so they can take it to the Sheriff and the Brand Inspector and be able to place all charges and costs against Defendant.

Plaintiff even tries to hoodwink this Court into handing down an order that expands that narrow area they call the "New Trespass Lands" to be able to go anywhere they so choose, gather cattle at any cost and send the Defendant the bill. Plaintiff cleverly attempts to slip this expansion into its request for relief when it states in part as follows: *...the United States is entitled to summary judgment as well as: a declaration that Defendant Bundy has placed or allowed his livestock to graze* ***on the New Trespass lands*** *in trespass and in violation of federal statutory and regulatory requirements; a judgment in favor of the United States; an order permanently enjoining Defendant Bundy from placing or allowing his livestock to graze* ***on these lands****; an order directing Defendant Bundy to remove his livestock from the land within 45 days of judgment; and an order explicitly authorizing the United States to seize and impound Defendant Bundy's livestock if they have not been removed within 45 days of judgment* ***or if they are found on the federal lands at any time in the future***. (Plaintiff's Opposition @pg-13, Ln. 7-15). (Emphasis provided).

It is very clear that Plaintiff starts out wanting an order dealing with the New Trespass Lands then wants the order to be expanded to include ***federal lands at any time in the future***. There is no qualifier here, no due process for any future alleged violation(s) they may deem fit to charge Bundy with at any place on what they would deem to be federal lands and deem to be cattle owned by Bundy. Plaintiff's Motion for Summary should be denied just based on this defense alone put forth by Defendant.

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CONCLUSION

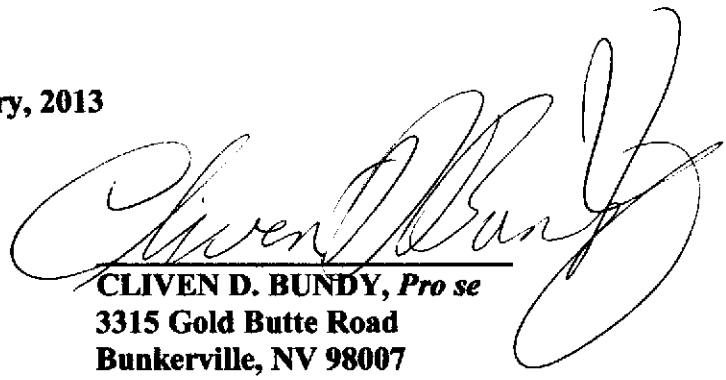
This case has nothing to do with cattle trespassing anywhere or any alleged harm that cattle are doing to species or public interest. If it did, the BLM has had over 20 years to gather any slick wild cattle they deemed themselves to have jurisdiction over. That never happened, so it must not be the cattle. It has to be Bundy and his speeches and political views. Plaintiff also alleges that Defendant supplied no evidence about other cattle than his being out there. An Evidentiary Hearing on the Cross-Motion to Dismiss is now in order and is respectfully requested by Defendant to bring forth witnesses showing that Bundy is not the ilk of the community. Moreover, an Evidentiary Hearing is in order to allow Defendant to cross examine the government witnesses that filed all the affidavits as to where they found cattle and improvements allegedly placed on the "New Trespass Lands". There never were any improvements on these lands, yet Plaintiff used pictures and affidavits representing them to be observed on the New Trespass Lands. This is nothing less than trumping up evidence to support their Motion for Summary; it does not meet the standards for qualified evidence. The improvements simply do not exist on the New Trespass Lands and an Evidentiary Hearing is in order to show the Court the true source of the evidence Plaintiff has put forth.

Defendant also respectfully requests that this Court, *sua sponte* may grant relief via *Res Judicata* given the strangeness of the way this case has been styled by Plaintiff, in that they chose not to enforce *Bundy I* by not seeking an order to impound and that the BLM never did gather any cattle of any kind and that now they dreamed up a new area called the New Trespass Lands in order to avoid being estopped by *Res Judicata*.

For all the foregoing reasons stated herein above, Defendant's Motion should be granted and Plaintiff's Motion denied, or such other relief the Court deems fit and proper.

DATED this 4 day of February, 2013

Respectfully submitted,



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PROOF OF SERVICE

I, **Cliven D. Bundy**, certify that this document entitled **BUNDY'S REPLY TO UNITED STATES' OPPOSITION TO CROSS-MOTION TO DISMISS (Evidentiary Hearing Requested)** was served upon Plaintiff on this date by the below identification method of service:

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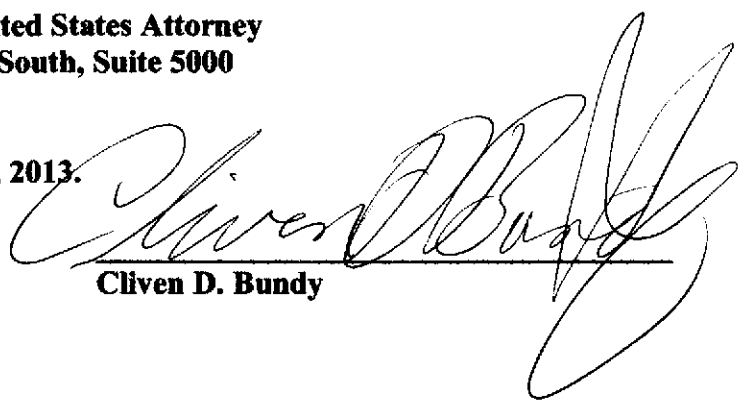
Dated this 4 day of February, 2013.



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